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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,546	06/18/2001	Paul Donato	28049/37454	1399

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EXAMINER

SHANG, ANNAN Q

ART UNIT PAPER NUMBER

2617

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/883,546

Applicant(s)

DONATO, PAUL

Examiner

Annan Q. Shang

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-181 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-181 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/27/05</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Per Telephone Interview with James A. Flight, Reg. No. 37,622 on 12/23/05, the last office action has been withdrawn.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-53 and 68-102, 105-123 and 126-181 are rejected under 35 U.S.C. 102(b) as being anticipated by **Williams et al (5,945,988)**.

As to claim 1, note the **Williams** reference figures 1-3, discloses method and apparatus for automatically determining and dynamically updating user preferences in an entertainment system and further discloses a method of prompting an audience member to enter an audience member identification into an audience meter comprising:

Determining a probability that the audience member is in an audience of a receiver (System Controller 'SC' 104 or System 'S' 100, figs.1-3 and col.3, lines 4-23 and col.5, lines 8-13), note that S-100 stores profiles of users (col.5, line 30-col.6, line 1+) and includes Camera 120 (col.3, lines 58-63) to detect a user presence at the receiver and SC-104 monitors a user behavior log (B-log), inputs or interactions (col.8, line 59-col.9, line 1+) to automatically determine, using statistically generated information of

the B-log and the information received from the Camera, a user at the receiver;

Prompting the audience member to enter the audience member identification if the probability that the audience member is in the audience of the receiver is less than a threshold; and suppressing prompting of the audience member if the probability that the audience member is in the audience of the receiver is greater than the threshold (col.9, lines 15-35, lines 43-51 and line 64-col.10, line 12), note that SC-104 identifies whether (B-log) or "tuning habits, history and style," such as a user input or interactions to a tuned channel(s)/station, video image of the user, audio recognition, rate of changing channels, etc., col.8, line 54-col.9, line 21, matches that of the data for any of the known users and calculates a user metric for information in B-log and the current system settings as well as each of the known system users, and if there is greater than a predetermined probability "a threshold" that the information in the B-log matches the user profile of one of the known users, SC-104 determines that a match has been made and configures S-100 in accordance with user profile database 700; if SC-104 identifies the most likely system user, i.e., a state where "the audience of the receiver is less than a threshold" or B-log is less than the threshold (a new user, col.8, lines 49-65, or known user), the SC-104 displays a first identified picture of known pictures or audio prompts requesting that the user affirmatively respond via remote control, voice command, etc., (col.9, line 64-col.10, line 12), note further that SC-104 compares audio, video image of the user, B-log, profiles data, etc., (col.10, lines 37-59) and at any point in time displays prompts to the user for identification if a generator B-log, stored profile, video image, etc., or any user settings differs from the system settings; furthermore even if a user

changes his/her settings (profile and B-log, col.3, lines 4-23 and col.8, line 56-col.9, line 42), SC-104 automatically and dynamically determines a user (col.15, lines 26-40), using the various methods discussed above.

As to claim 2, William further discloses where the suppression of the prompting comprises if the probability that the audience member is in the audience of the receiver is greater than the threshold, determining whether the audience member has already entered the audience member identification and prompting the audience member to enter the audience member identification if the audience member has not already entered the audience member identification and suppressing prompting of the audience member if the audience member has already entered the audience member identification (col.3, lines 4-23, col.5, lines 3-53 and col.9, line 64-col.10, line 12), note that SC-104 automatically determines a user of a plurality of users, with or without the user's interactions or direct communication using RC or audio responds.

As to claim 3, William further discloses where process is executed only after the passage of a predetermined amount of time from a previous prompting decision (col.9, lines 43-53 and line 64-col.10, line 12).

Claim 4 is met as previously discussed with respect to claim 2.

As to claim 5, William further discloses initially prompting the audience member to enter the audience member identification upon detection that the receiver has been turned on and executing the method only after the passage of a predetermined amount of time from the initial prompting (col.9, line 15-30, lines 43-53 and line 64-col.10, line 25).

Claim 6 is met as previously discussed with respect to claim 2.

As to claims 7-8, Williams further determines the probability that the audience member is in an audience of the receiver based upon a number of times that the audience member has been in the audience of the receiver during a corresponding day part or period and also based upon a program being received within a specific time period (col.7, lines 14-62 and col.8, line 12-42).

Claim 9 is met as previously discussed with respect to claim 2.

Claim 10 is met as previously discussed with respect to claim 3.

Claim 11 is met as previously discussed with respect to claim 2.

Claim 12 is met as previously discussed with respect to claim 5.

Claim 13 is met as previously discussed with respect to claim 2.

As to claim 14-15, Williams further discloses storing audience identification data in tables, collapsing the tables if the tables contain insufficient data to make a prompting decision (col.5, line 30-col.6, line 23) and collapsing of the tables is weighted depending upon age of the audience member identification data (col.6, line 23-32 and col.10, lines 26-36).

As to claim 16, the claimed "a method of prompting an audience member to enter an audience member identification..." is composed of the same structural elements that where discussed in the rejection of claim 1, note further that Williams teaches SC-104 determines a variable as a function of a number of times that the audience member was in an audience of the receiver and a number if times the receiver was turned on (col.14, lines 4-11), note further that the channel/station, watched/listened metrics is calculated

for time periods of each day, which meets the number of times the audience member was at the receiver and furthermore the receiver would have to be turned on for the user for watched/listened activities.

Claims 17-23 are met as previously discussed with respect to claim 16. William further teaches monitoring profiles and B-log data for during a predetermining time periods (col.6, lines 52-64 and col.7, lines 14-41) and further uses SIDs to identifies various classes of programs, sports, movies, drama, etc., and present to each user identified EPG specific to a user's profile and B-log information (figs.7-8 and col.5, line 39-col.6, line 56 and col.7, lines 14-51).

Claim 24 is met as previously discussed with respect to claim 1.

Claim 25 is met as previously discussed with respect to claim 2.

Claim 26 is met as previously discussed with respect to claim 3.

Claim 27 is met as previously discussed with respect to claim 2.

Claim 28 is met as previously discussed with respect to claim 5.

Claim 29 is met as previously discussed with respect to claim 2.

Claim 30 is met as previously discussed with respect to claim 7.

Claim 31 is met as previously discussed with respect to claim 8.

Claim 32 is met as previously discussed with respect to claim 2.

Claim 33 is met as previously discussed with respect to claim 3.

Claim 34 is met as previously discussed with respect to claim 2.

Claim 35 is met as previously discussed with respect to claim 5.

Claim 36 is met as previously discussed with respect to claim 2.

Claim 37 is met as previously discussed with respect to claim 14.

Claim 38 is met as previously discussed with respect to claim 15.

Claim 39 is met as previously discussed with respect to claim 3.

Claim 40 is met as previously discussed with respect to claim 5.

Claims 41-43 are met as previously discussed with respect to claim 1.

As to claim 44, the claimed “a method of prompting an audience member to enter an audience member identification...” is composed of the same structural elements that were discussed in the rejection of claim 1.

Claim 45 is met as previously discussed with respect to claim 1.

Claim 46 is met as previously discussed with respect to claim 7.

Claim 47 is met as previously discussed with respect to claims 17-23.

Claims 48-49 are met as previously discussed with respect to claim 16.

Claim 50 is met as previously discussed with respect to claims 17-23.

Claims 51-53 are met as previously discussed with respect to claim 1.

As to claim 68, the claimed “a method of prompting an audience member to enter an audience member identification...” is composed of the same structural elements that were discussed in the rejection of claim 1.

As to claim 69-71, Williams further monitors tuning velocity or the rate of changing channels and tuning acceleration (col.7, line 63-col.8, line 11 and col.9, lines 43-63).

As to claim 72, William further discloses where the tuning style comprises program clustering (col.5, line 8-col.6, line 7).



Claim 73 is met as previously discussed with respect to claim 3.

Claim 74 is met as previously discussed with respect to claim 5.

Claim 75 is met as previously discussed with respect to claims 7.

Claim 76 met as previously discussed with respect to claim 14.

As to claim 77, the claimed “a method of prompting an audience member to enter an audience member identification...” is composed of the same structural elements that were discussed in the rejection of claims 1 and 16.

Claims 78-80 are met as previously discussed with respect to claims 69-71.

Claim 81 is met as previously discussed with respect to claim 72.

Claims 82-88 are met as previously discussed with respect to claims 17-23.

Claim 89 is met as previously discussed with respect to claim 3.

Claim 90 is met as previously discussed with respect to claim 5.

As to claims 91-92, the claimed “An article of manufacture...” is composed of the same structural elements that were discussed in the rejection of claim 1.

Claims 93-94 are met as previously discussed with respect to claims 7-8.

Claim 95 is met as previously discussed with respect to claim 20.

Claim 96 is met as previously discussed with respect to claim 1.

Claim 97 is met as previously discussed with respect to claim 5.

Claim 98 is met as previously discussed with respect to claim 1.

Claim 99 is met as previously discussed with respect to claims 7-8.

Claim 100 is met as previously discussed with respect to claim 20.

Claims 101-102 are met as previously discussed with respect to claims 69-71.

Claims 105-107 are met as previously discussed with respect to claims 69-71.

Claims 108-113 are met as previously discussed with respect to claims 1 and 16.

Claim 114 is met as previously discussed with respect to claim 76.

Claim 115 is met as previously discussed with respect to claim 76.

As to claims 116-117, the claimed "an apparatus comprising..." is composed of the same structural elements that were discussed in the rejection of claim 1.

Claim 118 is met as previously discussed with respect to claims 7-8.

Claim 119 is met as previously discussed with respect to claim 1.

Claim 120 is met as previously discussed with respect to claim 5.

Claim 121 is met as previously discussed with respect to claim 1.

Claims 122-123 are met as previously discussed with respect to claims 69-71.

Claim 125 is met as previously discussed with respect to claim 20.

Claims 126-127 are met as previously discussed with respect to claims 69-71.

Claims 128-132 are met as previously discussed with respect to claims 1 and 16.

Claim 133 is met as previously discussed with respect to claim 14.

As to claim 134, the claimed "a method of distinguishing audience members to..." is composed of the same structural elements that were discussed in the rejection of claim 1.

Claims 135-136 are met as previously discussed with respect to claims 69-71.

Claims 137-138 are met as previously discussed with respect to claim 1.

Claims 139-141 are met as previously discussed with respect to claims 69-71.

Claims 142-143 are met as previously discussed with respect to claim 1.

As to claim 144, the claimed “an apparatus comprising...” is composed of the same structural elements that were discussed in the rejection of claims 1 and 16

Claims 145-146 are met as previously discussed with respect to claims 69-71.

Claims 147-151 are met as previously discussed with respect to claims 1 and 16.

Claim 151 is met as previously discussed with respect to claims 69-71.

Claims 152-154 are met as previously discussed with respect to claims 1 and 16.

As to claims 155-156, the claimed “An article of manufacture...” is composed of the same structural elements that were discussed in the rejection of claim 1.

Claim 157 is met as previously discussed with respect to claims 69-71.

Claims 158-160 are met as previously discussed with respect to claims 1 and 16.

As to claims 161-162, the claimed “an apparatus comprising...” is composed of the same structural elements that were discussed in the rejection of claim 1.

Claim 163 is met as previously discussed with respect to claims 69-71.

Claims 164-167 are met as previously discussed with respect to claims 1 and 16.

Claims 168-169 are met as previously discussed with respect to claims 69-71.

Claims 170-171 are met as previously discussed with respect to claims 1 and 16.

As to claims 172-176, the claimed “An article of manufacture...” is composed of the same structural elements that were discussed in the rejection of claims 1 and 16

As to claims 177-181, the claimed “an apparatus...” is composed of the same structural elements that were discussed in the rejection of claims 1 and 16.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 54-67, 103-104 and 124-125 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Williams et al (5,945,988)** in view of **Eldering et al (6,457,010)**

As to claims 54-55 and 57, William teaches the claimed limitations as previously discussed with respect to claim 1, but fails to explicitly teach applying a heuristic to determine where the audience member is in an audience of the receiver.

However, in the same field of endeavor **Eldering** teachings client-server subscriber characterization system and applies a heuristic to a user (col.13, lines 3-20 and col.14, lines 6-17).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Eldering into the system of Williams to quickly determine a user's profile or B-log and configure the system to provide the specific service(s) to each user.

Claim 56 is met as previously discussed with respect to claim 7.

Claims 58-64 are met as previously discussed with respect to claims 17-23.

Claim 65 is met as previously discussed with respect to claim 3.

Claim 66 is met as previously discussed with respect to claim 5.

Claim 67 is met as previously discussed with respect to claim 14.

Claim 103 is met as previously discussed with respect to claim 54-55.

Claim 104 is met as previously discussed with respect to claim 1.

Claim 124 is met as previously discussed with respect to claim 54-55.

Claim 125 is met as previously discussed with respect to claim 1.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Liebenow (6,530,083) discloses system for personalized settings.

Fernandez et al (6,697,103) disclose integrated network for monitoring remote objects.

Scarampi (4,931,865) discloses apparatus and methods for monitoring television viewers.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Annan Q. Shang** whose telephone number is **571-272-7355**. The examiner can normally be reached on **700am-400pm**.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Christopher S. Kelley** can be reached on **571-272-7331**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the **Electronic Business Center (EBC)** at 866-217-9197 (toll-free).



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